REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NOS. 353-54 OF 2006**

% **Date of Decision** : 17th September, 2007.

SURENDRA M. MITTAL & ANR. .... Appellant No.1 in person.

VERSUS

NATIONAL CONSUMER DISPUTES
REDRESSAL & ANR. .... Respondents.
Through Mr. Aditya Narain, Advocate
for respondent no.2.

CORAM:
HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES.
3. Whether the judgment should be reported in the Digest ? YES.

SANJIV KHANNA, J:

1. The present Letters Patent Appeal is directed against order dated 2nd December, 2005 passed by the learned Single Judge dismissing the writ petition of the appellant. In the said writ petition, the appellant no.1 had challenged orders dated 9th May, 2002, 29th

September, 2003 and 16th August, 2004 passed by the National Commission constituted under the Consumer Protection Act, 1986 (hereinafter referred to as the Act, for short).

2. The appellant, who appeared in person, argued that on 9th May, 2002, the National Commission had while reserving its order in First Appeal No. 49/1995 titled *Ravinder Kumar versus Surender Kumar Mittal* granted time to the parties to file their written synopsis and these were subsequently filed but the National Commission proceeded to dispose of the appeal itself on 9th May, 2002 by dictating an order in chamber. It was also stated by the appellant that no arguments were heard and addressed by parties on 9th May, 2002. Thus there has been violation of principles of natural justice. The subsequent orders also made subject matter of the writ petition, being orders dated 29th September, 2003 and 16th August, 2004, are passed by the National Commission on the review/recall applications filed by the appellant.

3. The appellant had entered into an agreement with the respondent No. 2, Mr. Ravinder Kumar for purchase of the second floor of property No. D-44/6, East of Kailash, New Delhi for a total cost of Rs.7,00,000/-.

The second floor was to be constructed by the respondent no.2. The construction was to start in November, 1991 and was to be completed by end of April, 1992. The possession was however delivered to the appellant-claimant in August, 1992 after the respondent No.2-contractor had received the final payment in July, 1992. The appellant was not satisfied with the quality of construction and claimed Rs.1,00,000/- as devaluation of the work done with interest as well as damages for the delay in construction.

4. The appellant succeeded before the State Commission, pursuant to which the appeal was filed before the National Commission by the respondent No.2.

5. By the impugned order dated 9th May, 2002, learned National Commission allowed the appeal of the respondent setting out reasons in detail.

6. Learned counsel for the respondent No.2 has disputed and contested the submissions of the appellant that oral arguments were not addressed before the National Commission on 9th May, 2002. It was stated that both the parties were given full opportunity to present and

urge their cases on the said date. Thus, it is a case of the respondent No.2 that proper hearing was held before the order dated 9th May, 2002 was passed.

7. There is no method by which this Court can verify whether arguments were addressed by both the parties on 9th May, 2002. Under Section 114 of the Indian Evidence Act, there is a statutory presumption that official acts have been validly done and performed as per law. Ills. (e) to Section 114 elucidates that when an official act is proved to have been done, it will be presumed that the official or judicial act has been regularly done. The presumption about validity and regularity is rebutable and not conclusive, but onus to prove to the contrary is on the person who seeks to rebut the presumption. The presumption can be rebuted by cogent and relevant material. (See, ***Devinder Pal Singh versus State of NCT of Delhi*** reported in (2002) 5 SCC 234; ***State of Himachal Pradesh versus Narender Kumar*** reported in (2004) 4 SCC 567 and ***Hari Singh versus State of U.P.*** reported in (1984) 2 SCC 624).

8. We do not think that appellant has been able to dispel and rebut the said presumption. Order dated 9th May, 2002 is a detailed order dealing

with various aspects and contentions raised by the parties. It specifically records that the learned counsel for the appellants had raised three arguments on the basis of which it was contended that the State Commission had gone wrong. It further records that the appellant, who is also an advocate, had argued to the contrary and had stated that the respondent was guilty of delay in giving possession and the material used in the construction of the house was of poor quality. Learned Members of the National Commission have specifically observed that they had heard the arguments and perused the material on record. Thereafter, the Members had given their reasons which elaborately deal with various contentions of the parties. In these circumstances, we do not see any reason not to agree and accept the contention of the respondent No.2 that arguments were addressed by the parties before the National Commission on 9th May, 2002.

9. It is a fact that the parties had filed their written synopsis after 9th May, 2002. However, it has not been pointed out and shown to us that the order dated 9th May, 2002 does not deal with the contentions and arguments raised and mentioned in the written synopsis. Written

synopsis can only record in writing, the arguments raised orally and the contentions made at the time of hearing. Written synopsis/arguments cannot go beyond what is argued orally. It may be relevant to state here that the National Commission in it's subsequent orders had taken care to examine the contentions on merits raised by the appellant in the written submission and found that no ground was made out to take a different view that what had been taken earlier.

10. An order passed by the National Commission in a first appeal can be made subject matter of Special Leave Petition before the Supreme Court but not in an appeal before the Supreme Court. Even if it is conceded and accepted that an order passed by the National Commission in a first appeal can be made subject matter of challenge in a writ court, power of judicial review by its very nature is limited. Interference is required and desirable when there is grave miscarriage of justice, a palpably wrong order contrary to law and principles of natural justice has been passed, or there is lack of jurisdiction. These principles are well established and need no further elaboration. It would suffice to refer to the observations made by Supreme Court in the cases of ***Tata***

Cellular versus Union of India reported in (1994) 6 SCC 651; ***New Horizons Limited and Another versus Union of India and Others*** reported in (1995) 1 SCC 478 and ***Govt. of A. P. versus Mohd. Nasrullah Khan*** reported in (2006) 2 SCC 373. Further a relief under Article 226 of the Constitution of India is always discretionary and it has to be normally shown and established that prejudice has been caused. In the present case contentions raised by the parties have been considered and dealt with by the National Commission in the order dated 9th May, 2002, even though the written synopsis were filed later on. Non-availability of written synopsis before the National Commission has not made any difference as contentions raised and argued were considered and decided by the National Commission. The appellant has not been able to prove and show that any prejudice has been caused to him (See, ***Om Prakash Mann versus Director of Education (basic) and Others*** reported in *(2006) 7 SCC 558* *and* ***P.D. Agrawal versus State Bank of India and Others*** reported in (2006) 8 SCC 776;). National Commission has also examined the written synopsis and taken the same into consideration while dismissing the review applications.

11. In this view of the matter, we uphold the order of the learned Single Judge holding, inter alia, that no case has been made out for exercising of jurisdiction under Article 226 of the Constitution of India. No costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

SEPTEMBER 17, 2007.
P